

In re Patent Application of  
**GRIFFIN**  
Serial No. 10/784,858  
Filed: **FEBRUARY 23, 2004**

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**REMARKS**

Applicant thanks the Examiner for the thorough examination of the present application, and for the courtesies extended to the undersigned attorney during the telephonic interview on Monday, December 18, 2006. During the interview, the rejection of the claims based upon Aarnio in view of Dolwin was discussed. To further prosecution, the undersigned attorney proposed amending the independent claims to incorporate subject matter similar to that of dependent Claim 3, for example, and explained why the prior art of record fails to teach or fairly suggest such a combination. The proposed amendments were well received by the Examiner, but no formal agreement as to the allowability of the claims was reached as the Examiner wished to further consider the changes in the context of a written response.

Accordingly, independent Claims 1, 17, and 23 are being amended herein to incorporate the subject matter of their respective dependent Claims 1, 19, and 25, which have been cancelled for consistency therewith. Independent Claim 10, which already included a recitation similar to that of Claim 3, has also been amended to more clearly define the subject matter thereof over the prior art. No new matter is being added.

**I. The Claimed Invention**

Independent Claim 1, for example, is directed to a cellular communications system comprising a plurality of mobile cellular communications devices each associated with a respective

user, and a cellular base station for wirelessly communicating with the plurality of mobile cellular communications devices. The cellular base station has a capacity associated therewith. The cellular communications system also comprises a central station for determining available capacity of the cellular base station based upon active wireless communications with the mobile cellular communications devices. The cellular communications system further comprises a subscription server for cooperating with the central station to provide non-real time subscription data to users on respective mobile cellular communications devices via the cellular base station when the determined available capacity thereof is greater than a threshold. Moreover, the subscription server cooperates with the central station to discontinue providing subscription data to respective mobile cellular communications devices based upon initiation of telephone calls.

Independent Claim 10 is directed to a similar cellular communications system. Independent Claim 17 is directed to a related subscription server, and independent Claim 23 is directed to a related method.

## **II. The Claims Are Patentable**

The Examiner rejected dependent Claims 3, 19, and 25 based upon U.S. Published Patent Application No. 2004/0078274 to Aarnio in view of U.S. Published Patent Application No. 2003/0092421 to Dolwin. As noted above, the subject matter of these dependent claims has been added to their respective

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independent Claims 1, 17, and 23, and independent Claim 10 already includes similar subject matter.

Aarnio is directed to a system for providing on-line subscription services from a subscription server to a user of a mobile terminal through the Internet. The subscription server receives from the mobile terminal user-specific information relating to the user's mobile terminal capabilities, the user's preferences of products, and the user's financial information. The subscription server sends to the mobile terminal locally or remotely retrieved information related to a product based on the user-specific information. The subscription server receives from the mobile terminal a request indicating whether the user wishes to either cancel or purchase the product. The subscription server cancels the product when the user so indicates, and downloads the product to the mobile terminal when the user desires to purchase the product. See, e.g., paragraph 0009-0015 of Aarnio.

While the Examiner correctly acknowledges that Aarnio fails to teach or fairly suggest a subscription server for cooperating with said central station to provide non-real time subscription data to users on respective mobile cellular communications devices via said at least one cellular base station when the determined available capacity thereof is greater than a threshold, he contends that Dolwin provides this noted deficiency. Dolwin is directed to a mobile phone network including an operation and maintenance centre (OMC) for collecting statistics from base stations to determine the extent of an available network capacity being used throughout a day.

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Upon identifying a time of low traffic capacity, streamed media data may be sent to a mobile communications device at that time over the mobile phone network. See, e.g., paragraph 0013 of Dolwin.

The Examiner further contends that Dolwin teaches a subscription server cooperating with a central station to discontinue providing subscription data to respective mobile cellular devices based upon an initiation of a telephone call. As support for this contention, the Examiner points to paragraphs 0021 and 0025 of Dolwin, both of which are reproduced below for convenience of reference.

"[0021] In a preferred embodiment a period of reduced information content or "discontinuous transmission" in the streamed media data is detected and a message is inserted to indicate this. Preferably the message replaces the portion of the streamed media data having reduced information content with data indicating when streamed media data playing is to restart. Thus, for example, a period of silence or for video data, a period with no motion, may be replaced with a discontinuous transmission message indicating when audio or video data is to restart or indicating the duration of the period of reduced information content. This message can then be detected by the mobile communications device and interpreted accordingly, for example, to replace the message with an appropriate number of null or empty streamed media data frames. In other words the method preferably includes filtering to remove discontinuous transmission portions from the streamed media data."

"[0025] In a preferred embodiment the mobile communications device is arranged to detect a discontinuous transmission message and to play the streamed media data with data, such as empty frames, inserted for a discontinuity period. The discontinuity period may be read from the message directly where the message specifies a discontinuity duration or may be determined from the message where the message specifies, for example, a time when playing of the streamed media data is to restart. Rather than the discontinuous transmission message being detected and replaced with empty frames, the inserted data may comprise, in embodiments, other data such as interpolated data."

The above-quoted passages of Dolwin merely teach replacing information that is "reduced" (i.e., no data) during periods of "discontinuous transmissions" with empty data frames at the mobile device based upon a place holder indicating where the data stream left off (i.e., indicating where the data became "reduced"). The periods of discontinuous transmissions that Dolwin is referring to are further described in paragraph 0046: "[t]he compressed data from source encoder **112** is passed to DTX filter **114**, which removes empty frames and replaces these with a message indicating a duration of non-transmission. During certain scenarios, for example where a speaker is not talking or where a picture is not changing, the source encoder **112** need not transmit any further data until the input source data changes." (Emphasis added).

Accordingly, Dolwin is not teaching that data transmission is discontinued when a telephone call for a

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respective wireless communications device is initiated. Rather, Dolwin is simply teaching that when there are periods of no data during a transmission, the source encoder discontinues transmission during those periods. Moreover, Dolwin is not contemplating discontinuing one type of data transmission (i.e., non-real time subscription data) based upon initiation of a different type of data transmission (i.e., telephone conversation data), but rather is simply introducing periods of discontinuities where gaps in a single data stream occur.

As such, the proposed combination of references simply fails to teach or fairly suggest discontinuing providing subscription data to respective mobile cellular communications devices based upon initiation of telephone calls, as recited in independent Claims 1, 10, 17, and 23. Since none of the remaining prior art of record teaches or fairly suggests the above-noted deficiencies, it is respectfully submitted that these claims are patentable. Their respective dependent claims, which recite still further distinguishing features, are also patentable and require no further discussion herein.

#### **CONCLUSION**

In view of the arguments presented above, it is submitted that all of the claims are patentable over the prior art. Accordingly, a Notice of Allowance is respectfully requested in due course. Should any minor informalities need to be addressed, the Examiner is encouraged to contact the undersigned attorney at the telephone number listed below.

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Respectfully submitted,

A handwritten signature in dark ink, appearing to read "John F. Woodson II", is written over a horizontal line.

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